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HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1217th MEETING

Held at Headquarters, New York,
on Monday, 29 March 1993, at 3 p.m.

Chairman: Mr. ANDO

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Uruguay (continued)

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Uruguay (continued) (CCPR/C/64/Add.4)

1. At the invitation of the Chairman, Mr. Jauregui (Uruguay) took a place at the Committee table.

2. The CHAIRMAN said that the Uruguayan representative would proceed to answer questions held over from sections I, II, III of the list of issues.

3. Mr. JAUREGUI said in response to a question from Mr. Prado Vallejo that the Statutory Limitations Act of 22 December 1986 was just one part of a large body of legislation dealing with the consequences of past human rights abuses. The Act specifically excluded a number of offences committed by members of the armed forces, and provided mechanisms for compensation under civil law for persons whose rights had been violated. The Act did not prevent victims from pursuing criminal complaints against violators, including members of the military. Other legislation in that area included a law granting exiled persons the right to return to Uruguay and to receive compensation for losses suffered as a result of exile, and a law permitting persons deprived of their rights to return to government employment. In addition, the General Assembly had recently passed a new law, Act No. 16,011 which gave citizens the right to file a "writ of amparo". Amparo writs would provide legal recourse to any citizen whose constitutional rights were violated illegally. In all, over 14,000 people were affected by the various laws. All of the above-mentioned laws were in conformity with provisions of the Covenant.

4. In response to a question by Mr. Prado Vallejo about whether the Statutory Limitations Act would not create a sense of impunity among members of the police and military, he said that no such sense of impunity existed. The press had been diligent in bringing individual cases of human rights violations to the attention of the public and increased public scrutiny had led to civil and criminal prosecutions of police and other officials in some important cases. In that connection, he pointed out that Amnesty International had noted an improvement in Uruguay's overall human rights record since the Act had been in force.

5. Regarding the comparison drawn by Mr. Aguilar between Uruguay and El Salvador, he said that the two situations were different. Whereas Uruguay's Statutory Limitations Act was similar to laws adopted elsewhere in Latin America, it was much more exclusive in its approach to the granting of immunity from prosecution than the amnesty law in, for example, Argentina. Moreover, the law permitting exiles to return to Uruguay and to reoccupy the jobs they had left represented a step forward in providing moral restitution to the victims of human rights abuses.

(Mr. Jauregui)

6. In regard to Uruguay's participation in regional human rights institutions, he said that a number of human rights cases involving Uruguay had been brought before the Inter-American Commission on Human Rights, and that Uruguay recognized the authority of both the Commission and the Inter-American Court of Human Rights, where that authority was consistent with the rights of States. In that connection, Uruguay would soon submit its Statutory Limitations Act to the Commission for review.

7. In response to questions regarding paragraph 116 of the periodic report, he said that under article 74 of Uruguay's constitution all men and women born at any place within the territory of the Republic were natural citizens, as were the children of Uruguayan mothers and fathers, regardless of their place of birth.

8. In response to Miss Chanet's concern about guarantees of individual freedoms, and the question put by Mrs. Higgins regarding the compatibility of article 168, paragraph 17 of the Constitution with article 4 of the Covenant, he noted that article 31 of the Uruguayan Constitution stated explicitly that individual security could not be suspended except with the consent of the General Assembly.

9. With respect to Committee members' questions concerning the rights of the disabled, he said that Uruguay was developing new policies for the disabled in accordance with the recommendations of the Inter-American Commission on Human Rights. As noted in paragraphs 26 and 27 of the report, gender discrimination was prohibited; moreover, the Government had passed laws designed to promote equality of opportunity through so-called "reverse discrimination" or preferential hiring to eliminate past inequalities. In addition, claims regarding discrimination could be brought before a judge.

10. In response to Mr. Fodor's question, he said that to date Act No. 16,048 which provided penalties for incitement to discrimination had never been invoked. Mrs. Evatt had asked whether the measures currently being taken would continue into the future. In fact, a technical cooperation project, which would guarantee the continuation of those measures was currently under way. Regarding her inquiry about the nature of the Commission on Human Rights, he said that he had been referring to a section on human rights established within the Ministry of Foreign Affairs; its domain was investigation, follow-up and responding to international consultative bodies, especially those which dealt with human rights issues. In reply to the query of Mr. Dimitrijevic, he replied that ethnic minorities were indeed fully integrated into Uruguayan society, and enjoyed equal possibilities. Discrimination as such did not exist. In reply to Mr. Pocar's inquiry as to whether the executive had the power to intervene in the 34 cases cited, he replied that those were civil proceedings protected by all the guarantees of due process. Out of the 34 cases cited, all but 4 had resulted in compensatory payments.

11. Mr. BRUNO CELLI pointed out that Uruguay's right to take the case before an international tribunal had never been called into question. The American Convention provided that all States that had recognized the jurisdiction of the Inter-American Court were entitled to seek consultative opinions from it. Uruguay had recently submitted to the Inter-American Court a case concerning the competence of an intergovernmental human rights organization to evaluate the compatibility of domestic laws with the American Convention on Human Rights. The Statutory Limitations Act reflected the principle that the public interest took precedence over any private interest by stipulating that the State was responsible for assessing the general political situation, and that the State alone could call for punitive action. Human rights abuses, especially the cases of "enforced disappearance" that had occurred in Uruguay, were crimes of an essentially public nature, of human and universal interest. According to a study prepared by Mr. Gros Espiell and published in June 1989, the issue of human rights in Uruguay had ceased to be the exclusive domain of domestic law. Moreover, under the provisions of the Covenant, a State was obliged to adopt measures to clarify facts and to individualize responsibility. That was an issue not of compensation or restitution but of bringing the truth to light. It would be useful to learn how the reporting State squared the Statutory Limitations Act with Article 2, paragraph 2, and Article 2, paragraph 3 (a), of the Covenant.

12. Mr. POCAR said that he agreed that the executive had no role in civil cases involving the payment of compensation. However, the Statutory Limitations Act referred only to political prisoners. It would be useful to know who decided whether a particular case was covered by the Statutory Limitations Act, the executive or the courts; and if it was the executive, what criteria were used. It had been his understanding that the 34 cases cited were civil cases and that the Statutory Limitations Act therefore did not apply. It was important to know whether or not his understanding was correct.

13. Mr. JAUREGUI, referring to section II (a) of the list of issues, said that there had been no disappearances, extrajudicial executions, or tortures in the form of organized or institutional repression. There had been isolated cases of mistreatment deriving from excessive use of force, and those cases had been duly investigated. They were all minor, and did not involve physical attack. The role of the Ministry of the Interior was simply to assist the justice system in clarifying facts; the principle of the separation of powers prevailed. Act No. 16,170, article 58, established an agency of the police department to act as a consultative and watchdog organization for the branches of the Ministry. Its task was to report on irregularities, to receive complaints, and to prepare summary reports as required by the Ministry. That agency had effectively assisted the Ministry of the Interior in the prevention and elimination of torture.

14. In reply to section II (b), he said that police officers were given no special privileges for the use of firearms. All individuals had the right to bear arms; private individuals were, however, required to provide special permission to do so. Articles 26 and 28 of the Penal Code governed the use of firearms. No complaints of violations by police of the relevant regulations had been lodged.

(Mr. Jauregui)

15. In response to section II (c), he had earlier cited two news articles from the Uruguayan press, which reported that, in one case, four police, in another, the director of a juvenile institution, and in the third, a government official, had been brought to trial, indicating that Uruguay was abiding by article 7 of the Covenant. There were no restrictions of individual freedoms, including the liberty of movement. Persons could be arrested only if caught in flagrante delicto, or if proof of the same was offered by written order of the competent judge. The remedy of habeas corpus was guaranteed by the Constitution. Confessions and testimony obtained under duress were not admissible as proof in courts of law; only testimony given before the competent judge in the presence of a lawyer was valid, in accordance with article 185 of the Penal Code. It was also important to note that Act No. 15,737 had made article 7 of the Covenant into domestic law and that all complaints to administrative and judicial authorities had been duly investigated. He stressed that there was absolute separation of powers and that any measure taken by the police could be investigated by the judiciary. With reference to section II (d), Act No. 14,470 governed punitive incarceration, and established that prisoners were in the charge of the competent judge with regard to legal proceedings; the prison authorities had exclusive competence over prison administration. Government officials were required to respect all international conventions on human rights and if they failed to do so they were duly punished under domestic law. Members of the Supreme Court paid a yearly visit to the prisons. Within the National Directorate of Prisons there also existed the Institute of Criminology, which monitored prisoners during their period of incarceration, and the National Association of Prisoners and Former Prisoners, which dealt with the reassimilation of prisoners into society. He drew attention to Act No. 17,170 creating the post of Counsel for the Police, whose task was to defend police officials accused of committing offences in the course of duty, pointing out that everyone in Uruguay had the right to protection of their human rights. In response to section II (e), he drew the Committee's attention to paragraphs 56 to 77 of the report, which illustrated the extent to which the United Nations Standard Minimum Rules for the Treatment of Prisoners had been adhered to. The laws in force in Uruguay were consistent with those standards. In addition, the National Association of Prisoners and Former Prisoners was represented in all places of detention in Uruguay. There was also a prison bulletin.

16. Turning to section II (f), he drew the Committee's attention to articles 16 and 60 of the Uruguayan Constitution and articles 118-124 of the Code of Penal Procedure, which provided that a statement made by a person under detention must be submitted to a magistrate within 24 hours and the person arraigned within 48 hours of his arrest or be released. Moreover, under article 69 of the Code of Penal Procedure, the sentence imposed must take into account the amount of time a person had already spent in detention. Regarding section II (g), he said that a person could not be held for more than 24 hours without being allowed contact with his lawyer and must be allowed to communicate with his family within 48 hours unless a magistrate ruled otherwise. In connection with section II (h), he said that he would make the text of Ruling No. 7019 of the Supreme Court available to the Committee. In brief, the Ruling provided that the competent judge must ensure a speedy trial and if, after 120 days, no

(Mr. Jauregui)

evidence had been submitted, the competent judge must explain in writing why the required action had not been taken. The President of the Supreme Court of Justice had asked him to inform the Committee that the provisions regarding a speedy trial would be fully complied with, except in those cases where more time was needed for investigation, when an extension of the time-limit would be requested.

Right to a fair trial (article 14 of the Covenant) (section III of the list of issues)

17. The CHAIRMAN read out section III of the list of issues concerning the third periodic report of Uruguay, namely: (a) the legal and administrative provisions governing Tenure, dismissal and disciplining members of the judiciary, and (b) the organization and functioning of the legal profession, particularly the Bar, in Uruguay.

18. Mr. JAUREGUI (Uruguay) noted that Uruguay had the third highest proportion of judges to population in the world, with 15.5 judges per 1,000 inhabitants - a figure which indicated the importance attributed by Uruguay to judges and the judicial function. Its legislation established a complex system for the organization of the judiciary in accordance with the Constitution in which the members of the Supreme Court of Justice were designated by the National Assembly and members of the Court of Appeals were nominated by the Supreme Court and confirmed by the Senate. There were four different procedures for the designation of judges at the various hierarchical levels and they included provisions regulating the dismissal of members of the Supreme Court and the appellate courts. Disciplinary matters were also covered by legislation, and a complex and flexible mechanism had been set in place ensuring the true independence of the judiciary. Members of the Bar belonged to a civil association which had been very active in the promotion of human rights. The statute could be provided to the Committee on request.

19. Miss CHANET, referring to article 7 of the Covenant, said that, although it seemed clear that torture was not practised systematically in Uruguay, some cases of torture and mistreatment of persons under detention had been reported, particularly in police stations and the centres for minors. The absence of any supervisory body for the police might perhaps have something to do with that situation. Referring to article 10 of the Covenant, she asked whether individuals could submit complaints regarding mistreatment and how such complaints were dealt with. Referring to paragraphs 50 and 51 of the third periodic report, she commented that article 71 of the Code of Penal Procedure did not seem compatible with article 9 of the Covenant and asked what was the maximum duration a person could be held in detention before being sentenced. She also asked whether the information provided in paragraphs 54 to 77 of the report referred to conditions which still existed in Uruguay.

20. Mr. FODOR noted that the report contained no information relating to article 7 of the Covenant and asked whether a judicial officer could return to duty while an accusation alleging mistreatment of a person under detention and, in particular, torture, was pending against him. In connection with paragraph 38 of the periodic report, he asked what the reasons were for the delay in ratifying the Conventions relating to slavery. Referring to paragraphs 49 to 53, he said that it would seem more logical to regulate detention itself rather than the exemptions to it. Paragraph 51 seemed to contradict the principle of the presumption of innocence.

21. Mr. WENNERGREN, referring to article 9 of the Covenant, noted that the Uruguayan Constitution established no time-limit within which a judge must decide on the lawfulness of a person's detention, and asked whether that point was covered in the legislation. In connection with article 10 of the Covenant, he asked under what circumstances a prisoner might be placed in solitary confinement and what guarantees existed of the right to freedom of information for detainees held in a maximum security prison. Referring to paragraphs 64 and 65 of the report, he commented that the Classification and Diagnosis Unit described there suggested the possibility of a kind of brainwashing, and asked whether there were provisions regulating the extent of such examinations. In connection with article 7 of the Covenant, he asked what safeguards existed against the subjection of persons under detention to medical or scientific experimentation.

22. Mr. LALLAH associated himself with the questions raised by Mr. Fodor regarding pre-trial detention, and asked whether the decisions taken by a judge with regard to the waiving of pre-trial detention could be appealed to a higher court. He noted that the periodic report did not deal with article 10, 2 (a) of the Covenant, and pointed out that although there was a heading, after paragraph 72, referring to annual prison visits by members of the Supreme Court, no information on such visits had been provided.

23. Mr. SADI noted that Amnesty International had informed the Committee that new reports of ill-treatment by the police in the case of known criminals were still being received and that some previously reported cases of torture remained outstanding. He asked for further information on those subjects.

24. Mrs. EVATT asked whether a defendant could appeal to another judge in cases in which the examining judge refused to grant bail, whether legal aid was available for such an appeal and whether there were any rules about how quickly the appeal could be heard.

25. The representative of Uruguay should indicate how serious the problem of violence against women was in Uruguay, how often firearms were involved in the killing or injury of women, and what measures were being taken to deal with the problem. He should inform the Committee of the number of complaints of ill-treatment or torture involving women prisoners made in the past few years and also indicate whether any specific measures were being taken to protect women in custody from sexual abuse or violation and whether there were separate prisons and facilities for women providing conditions equivalent to those for men.

(Mrs. Evatt)

26. She inquired whether there were special measures to protect young people in custody. She wished to know whether there was a large incidence of suicide in custody and what kind of prisoner was particularly likely to commit suicide.

27. According to article 237 of the Constitution, the members of the Supreme Court of Justice could serve for 10 years and could not be re-elected until after a lapse of five years following the previous term. She wished to know whether that applied to each judicial office in turn or whether it involved a total of tenures in a series of offices.

28. She wished to know who ultimately decided whether or not a judge was to be dismissed for violating the Constitution. Could a judge be dismissed simply on the basis of a political decision of the elected parliament, or could the question of his dismissal be tested by a judicial decision? The representative of Uruguay should describe how legal aid was provided in Uruguay. Finally, she wished to know how many of the 440 judges in Uruguay were women.

29. Mr. MAVROMMATIS said that, while the Committee acknowledged that systematic, officially sanctioned torture was a thing of the past in Uruguay, there were still reports of isolated cases of torture in that country. That was probably due to the ripple effects of the Statutory Limitations Act and also to the fact that there had been a number of allegations of torture that had not been properly investigated, if investigated at all.

30. Noting that, according to paragraphs 39, 40 and 43 of the third periodic report, the remedy of amparo was available only to persons whose constitutional rights had been violated in a "manifestly unlawful manner", he wondered what was the reason for the restriction. With respect to pre-trial detention, referred to in paragraphs 50 and 51 of the report, he considered that the magistrate's decision to keep the defendant in custody should be the exception rather than the norm. Unless he had reasonable grounds to believe the contrary, the magistrate should assume that the defendant would not commit a further offence.

31. He requested further information on the promotion of judges, measures for disciplining judges that did not result in their dismissal, transfers - which could sometimes be punitive - and retirement age. He wished to know whether it was possible, under Uruguayan law, to grant judges, in the absence of malice, immunity from civil or criminal process in the discharge of their duties. The representative of Uruguay should indicate what measures existed for safeguarding the conditions of service of judges for the duration of their service.

32. Mr. FRANCIS wished to know whether the independence of the judiciary could be said to be ensured when judges were appointed by the General Assembly. He understood that, if the General Assembly did not make an appointment within a specified time-limit, Uruguayan law provided that the appointment should be made by the senior judges in the Court of Appeal. Given that manner of appointment, he wondered whether it could be claimed that the judiciary was completely independent in all circumstances.

33. Mr. JAUREGUI, replying to a question raised by Miss Chanet, said that the Uruguayan authorities had taken all measures within the constitutional and legal framework to ensure strict observance of article 7 of the Covenant. Whenever the Government received a complaint of a violation under article 7, it always endeavoured to bring those responsible to justice. With regard to the photographs of detainees chained to their beds, which had been circulated to the press, he noted that, four days after the photographs had appeared, a commission of Uruguayan parliamentarians had publicly declared that the photos had been fabricated and that the detainees had willingly allowed the photographs to be taken. The detainees had not been tortured and had not been subjected to any treatment that violated the provisions of article 7. With respect to article 10 of the Covenant, Uruguay respected the United Nations Standard Minimum Rules for the Treatment of Prisoners. Prisoners had every opportunity to make complaints of inhumane treatment. If persons accused of such treatment were convicted, they were imprisoned.

34. With regard to the concern expressed by Mr. Fodor, he said that a police officer who was accused of ill-treatment was not permitted to return to active service until his trial was over; if convicted, he was obliged to accept the sentence given by the judge.

35. It had been said that Act No. 15,859 seemed to give judges a great deal of discretion. The Act called the "law of prevention without imprisonment", allowed judges to decide whether or not a person accused of an offence was to be placed in preventive detention. When it could be presumed that the defendant would not undertake any further criminal action, judges usually decided to release the defendant. Act No. 15,859 was a wise law, particularly when there was a large number of prisoners and the country did not have the necessary facilities and security forces to keep them all in prison. He would send a copy of the text of the Act to the members of the Committee.

36. Mr. Wennergren had asked about time-limits for amparo and habeas corpus. Article 17 of the 1971 Constitution provided that, in the event of unlawful detention, the interested party or any other person could apply to the competent judge for a writ of habeas corpus to the end that the detaining authority should immediately explain and justify the legal grounds for such detention, the decision of the aforementioned judge being final. No one could be detained for more than 24 hours without being brought before a judge, and the Supreme Court of Justice had urged judges to respect that time-limit. Although guaranteed by the Constitution, the remedy of habeas corpus was not very much used; it was invoked in exceptional cases when all other customary remedies had been exhausted. He would provide the members of the Committee with statistics regarding the number of times habeas corpus had been invoked in Uruguay.

37. A question had been raised about the rules for holding detainees incommunicado. In accordance with article 7 of the Covenant, systematic or officially sanctioned torture was not practised in Uruguay.

(Mr. Jauregui)

38. The recourse of amparo could be used against the police or even a prison officer if he violated the human rights of a detainee. The Government had a strong interest in ensuring that no person who was guilty of human rights violations went unpunished.

The meeting rose at 6.05 p.m.